Hong Kong Police Force's refusal to disclose the composition and brands of tear gas rounds used and coloured solution sprayed by specialised crowd management vehicles
(Related to Code on Access to Information)

Investigation Report

The Complaint

The complainant, Ms A, alleged that the Hong Kong Police Force ("HKPF") had breached the Code on Access to Information ("the Code") by refusing to disclose two pieces of information regarding the tear gas rounds it used and the coloured solution sprayed by the specialised crowd management vehicles ("coloured water"), namely:

(1) the composition of the tear gas rounds and coloured water; and

(2) the brands of the tear gas rounds and coloured water.

Our Findings

Sequence of Events

2. According to the information provided by HKPF and Ms A, in its written reply to Ms A's written request for the aforesaid information, HKPF explained that the details of the use of force were related to the Police's operations, and disclosure of such information might enable people who contemplated disturbance to public safety and order to take targeted actions to harm the Police's preservation of the peace, public safety and order. HKPF,

therefore, invoked paragraph 2.6(f)[1] of the Code as the reason for refusal to provide the requested information.

3. Ms A told this Office that some members of the public who were at the scene where the Police had used tear gas or visited those locations afterwards showed symptoms of bronchitis, cough and diarrhea. As medical practitioners did not know the composition of the tear gas, they could not give the right treatment. In Ms A's opinion, the public interest in disclosure of the requested information outweighed the impact on the department as the matter concerned "protection of public health, safety or the environment", which fitted the circumstances described in paragraphs 2.2.4[2] and 2.2.5[3] of the Guidelines on Interpretation and Application of the Code ("the Guidelines"). Hence, HKPF's refusal to disclose the information requested was in breach of the Code.

Response from HKPF

4. HKPF pointed out that there have been more than a thousand protests, processions and public meetings arising from oppositions against the amendment to the Fugitive Offenders Ordinance in Hong Kong since 9 June 2019, and some of them resulted in illegal acts of serious violence, including blocking roads to paralyse the

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[1] Paragraph 2.6(f) of the Code: A department may refuse to disclose information if the disclosure of which would harm or prejudice the preservation of the peace, public safety or order, or the preservation of property.

[2] Paragraph 2.2.4 of the Guidelines: The effect of paragraph 2.2 of the Code is that those Part 2 provisions containing reference to ***harm or prejudice*** may, where there is no statutory restriction or legal obligation which prevents disclosure, be set aside in circumstances where there is a clear public interest in disclosure of the information sought and this public interest outweighs the harm or prejudice that may result to the Government or to any other person.

[3] Paragraph 2.2.5 of the Guidelines: Whilst the public interest would rarely justify disclosure of a trade secret, there may be circumstances in which disclosure of information which is considered to be commercially sensitive would be justified where this is necessary or desirable to protect public health, safety or the environment. It would be necessary for such considerations to clearly outweigh any prejudice to the competitive position of a third party or to the Government that might result therefrom, and for the risk contemplated to be substantial and specific. The public interest in disclosure would then override the public interest in preserving confidentiality.

traffic, hurling petrol bombs and bricks, arson and criminal damage, assaulting or setting fire to others who hold different views. Such behaviour posed serious threat to the overall safety in Hong Kong. The Police had to use force and such equipment as tear gas rounds and coloured water to deal with violent and illegal acts so that safety and order could be restored promptly in Hong Kong.

5. The use of tear gas rounds to disperse the crowds and take control at the scene where violence erupted enables the Police to keep a safe distance from protesters/rioters to minimise the possibility of injuries on both sides. Coloured water can stain people's clothes and skin, thus helping the Police identify those who have been at the scene where violent clashes take place. Tear gas, if inhaled, can cause temporary irritations such as burning skin and eyes, coughs and sneezes due to irritated nose and throat. Coloured water is non-toxic coloured liquid, which is not harmful to humans, and therefore, will not pose risks to public health.

6. HKPF further noted that it has to ensure the efficacy of the use of force in dispersing crowds and taking control at the scene where violence erupts. Disclosure of the composition of the tear gas rounds and coloured water (i.e. Information (1) mentioned in **paragraph 1**) might enable people who contemplate disturbance to public safety and order by targeted actions to harm the Police's preservation of the peace, public safety or order.

7. Moreover, disclosure of the brands of the tear gas rounds and coloured water (Information (2) mentioned in **paragraph 1**) might help those having a hidden agenda know the details of the supply of ammunition and equipment to HKPF, such that they could contemplate targeted actions to disturb public safety and order, as well as undermining the Police's capacity and strategies in dealing with large-scale illegal activities, thereby threatening the society.

8. HKPF explained to this Office how disclosure of such information would affect its preservation of public safety and what "targeted actions" might be involved. Nevertheless, HKPF considered it inappropriate to elaborate on this to members of the

public as it must ensure work effectiveness. Overall, HKPF opined that disclosure of such information would likely affect its preservation of public safety and the prevention, investigation and detection of offences. Hence, paragraph 2.6(f) of the Code was applicable to the circumstances in which it refused to disclose information in this case.

9. Furthermore, HKPF was of the view that paragraph 2.1.2 of the Guidelines (see **paragraph 10**) only required the department concerned to elaborate on its justification to invoke the relevant paragraph(s) in Part 2 of the Code where applicable. If HKPF further explained in its reply to Ms A how disclosure of such information would harm its preservation of public safety, that would be equivalent to revealing factors affecting the operational effectiveness of HKPF. After considering the nature of the information requested by Ms A, HKPF explained the justification for refusal to Ms A in accordance with the Code in a practicable, commensurable and appropriate manner.

Our Comments

10. The Code requires Government departments to make available Government-held information for the public as far as practicable unless there are valid reasons as those set out in Part 2 of the Code for withholding such information. It is also stated in paragraph 2.1.2 of the Guidelines that when a request for information is to be refused or partially refused, the applicant concerned must be informed of the reasons for refusal quoting all the relevant paragraph(s) in Part 2 of the Code on which the refusal is based with appropriate elaboration to justify invoking the relevant paragraph(s) in Part 2 of the Code (where applicable).

11. This Office agrees with HKPF that disclosure of the information requested by Ms A would enable understanding of the equipment supply for the Police and relevant details, which may undermine the capacity and deployment of HKPF in dealing with illegal activities, and harm HKPF’s preservation of public safety

(see **paragraph 6**). That means paragraph 2.6(f) of the Code is applicable.

12. As regards the public interest mentioned in **paragraph 3**, we consider it natural that the tear gas rounds and coloured water would cause temporary irritations to people as their purpose is to disperse crowds. If there is strong evidence that the tear gas rounds and coloured water used by the Police would have serious and long-term impact on humans, and giving the right treatment for the impact requires knowledge of the composition of the tear gas rounds and coloured water, it would be necessary to assess whether the public interest outweighs the harm or prejudice that may cause to the Police's preservation of the peace, public safety or order. Nevertheless, we have not seen any substantial evidence that such circumstances have arisen.

13. In view of **paragraphs 10 to 12** above, we therefore consider that HKPF's refusal to disclose the information requested by Ms A was not in breach of the requirements in the Code.

14. Furthermore, paragraph 2.1.2 of the Guidelines stipulates that the department concerned should elaborate on its justification to invoke the relevant paragraph(s) in Part 2 of the Code where applicable. We are of the view that Government departments are obliged to explain to the applicant the justification for their decisions. We notice that in its reply to Ms A (see **paragraph 2**), HKPF had briefly explained its decision to refuse disclosure of the relevant information by invoking paragraph 2.6(f) of the Code. The explanation, however, lacked details, and Ms A might find it difficult to understand the substantial impact brought by disclosure of the relevant information on the Police's preservation of public safety. Had HKPF included the explanation stated in **paragraphs 6 to 7** in its reply to Ms A, it would have assisted Ms A in understanding its justification for invoking paragraph 2.6(f) to refuse to disclose the relevant information, which would be in compliance with the requirements of the Code.

Conclusion

15. In view of **paragraphs 11 to 14** above, The Ombudsman considered Ms A’s complaint against HKPF **unsubstantiated**.

16. However, based on **paragraph 14** above, we urge HKPF to learn from this case and remind its staff to explain to applicants in detail the justification for invoking any provisions in Part 2 of the Code as the reason for refusal when handling requests for information from members of the public.

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